

REMARKS

Applicants acknowledge the withdrawal of claims 47, 49 and 50. The pending claims are 1-3, 14, 16-18, 22-24, 32-35, 48 and 51.

Rejection under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-3, 14, 16-18, 22-24, 48 and 51 under 35 U.S.C. § 102 (B) as being anticipated by Del Val et al. MPEP 706.02(a)(II)(A) states "If the publication or issue date of the reference is more than 1 year prior to the effective filing date of the application (MPEP § 706.02), the reference qualifies as prior art under 35 U.S.C. 102(b).". MPEP 706.02(a) states "The examiner must determine the issue or publication date of the reference so that a proper comparison between the application and reference dates can be made. A magazine is effective as a printed publication under 35 U.S.C. 102(b) as of the date it reached the addressee and not the date it was placed in the mail." MPEP 2128 states "A reference is proven to be a "printed publication" upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.".

Applicants respectfully submit that the Del Val et al. reference was not publicly available more than one year prior to the February 4, 2002 filing date of the instant application. The Examiner suggested that either one of two things could be provided to establish when the abstract book was publicly available: "...provide a letter from the publisher of the abstract book indicating when the abstract was first made publicly available, or a declaration by Applicant, since they received the Abstract book, as to when they first received it."

The Applicant does not have a record as to the exact date of receipt of the abstract book. Applicants contacted the publisher to determine the date of shipping of this abstract book, but the publisher did not have record of this as it was over three years ago. However, the publisher did state that their policy is to ship all copies of a particular issue on one day, and that all copies of this issue

would have been shipped from within the United States. Applicants enclose a declaration from Swathi Rao stating the aforementioned policy of the publisher, Elsevier.

As evidence of the date of accessibility of the cited reference, Applicants enclose date stamped copies of the abstract book from the Stanford, UC Berkeley, and UC Davis libraries. Stanford Library received the abstract book on February 21st, 2001. UC Berkeley Library received it on March 6th, 2001, and UC Davis received it on March 16th, 2001. Applicants contend that since all publicly available copies of the abstract book was shipped from the publisher on one day, the earliest stamped date of receipt, February 21st, 2001 at Stanford Library, is the earliest date of public availability. This date is still more than two weeks later than one year prior to the Applicant's February 4th, 2002 filing date. Thus, the Del Val reference does not qualify as 102(b) prior art to anticipate any of the claims of the instant application. Applicants therefore respectfully request this ground for rejection be withdrawn.

Rejection under 35 U.S.C. § 102(a)

The Examiner has rejected claims 1-3, 14, 16-18, 22-24, 48 and 51 as being anticipated by Del Val et al. In particular, the Examiner points out that the previously submitted 1.132 declaration was insufficient because it did not describe the role of Suzanne Teuber, who was an author of the publication but not an inventor of the application. Applicants would like to apologize for this omission and address this point here.

In order for a printed publication to anticipate under 35 U.S.C. § 102(a), the publication must describe the work of *another* before the Applicant's invention. See 35 U.S.C. 102(a). In particular, MPEP 2132.01 states "[a]n Applicant's disclosure of his or her own work within the year before the application filing date cannot be used against him or her under 35 U.S.C. § 102(a)". Accordingly, Applicants enclose a second declaration of Dr. Bob Buchanan, the senior author of the Del Val reference and an inventor of the instant application. Dr. Buchanan declares that a co-author of the Del Val reference, Suzanne Teuber, who was not named as an inventor in the instant application, did not make any original contribution to the work described in the Del Val abstract as

related to the claims in the instant application. Thus, the Del Val reference describes the inventive work of only the inventors listed in the instant application. For this reason, the Del Val reference does not qualify as prior art under 102(a) to anticipate any of the claims of the instant application because it does not disclose the work of *another*. Accordingly, Applicants respectfully request that this ground for rejection be withdrawn.

Rejection under 35 U.S.C. § 103(a)

As a preliminary matter, Applicants thank the Examiner for once again advising, in Section 6 of the Office Action, the Applicants of their obligation under 37 C.F.R. § 1.56 to point out any instances of lack of common ownership with respect to co-pending applications in order for the Examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. 102(e), (f), or (g) prior art under 35 U.S.C. § 103(a). Applicants again wish to state that all co-pending applications are commonly owned.

The Examiner has rejected claims 32-35 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Del Val et al., in view of U.S. Patent No. 4,281,061. Applicants respectfully traverse this rejection.

35 U.S.C. § 103(a) states: “A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” As shown above, the Del Val reference does not qualify as 102(b) prior art, and is therefore not available for use in a 103(a) rejection. Applicants therefore respectfully request that this ground for rejection be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is

determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **416272000200**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: October 24, 2005

Respectfully submitted,

By  _____
Otis Littlefield

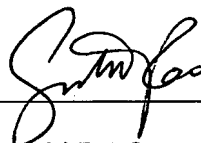
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I, Swathi Rao, declare as follows:

1. I am a Patent Agent at Morrison and Foerster.
2. I contacted Elsevier Publishing in order to determine the date of shipment of Volume 107, Issue 2 of The Journal of Allergy and Clinical Immunology.
3. I corresponded via e-mail with Deirdre Moorehead from the Elsevier Global Author Support Department.
4. Ms. Moorehead informed me that Elsevier policy is to ship all copies of a particular issue on one date from their warehouse in the United States.
5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

10/24/05

Date



Swathi RAO